

NOTICE OF INTENT

Department of Revenue Policy Services Division

Sales Tax on Property Used In Interstate Commerce (LAC 61:I.4420)

Under the authority of R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.4420 relative to the sales tax exemption set forth in R.S. 47:305.50 for vehicles used in interstate commerce.

This proposed rule provides guidance on the length of time vehicles must be used in interstate commerce in order to qualify for the exemption. It also discusses the consequences if a taxpayer claims the exemption at the time of purchase and subsequently does not qualify for the exemption.

Title 61 REVENUE AND TAXATION Part I. Taxes Collected and Administered By the Secretary of Revenue

Chapter 44. Sales and Use Tax Exemptions

§4420. Property Used In Interstate Commerce

A. Revised Statute 47:305.50(A) allows certain taxpayers to register trucks with a gross weight of 26,000 pounds or more, trailers to be used with such trucks, and contract carrier buses with the Office of Motor Vehicles of the Department of Public Safety and Corrections (OMV) without paying state or local sales or use tax. To qualify for the exemption, the taxpayer's activities must be subject to the jurisdiction of the United States Department of Transportation and the taxpayer must certify to the OMV that the property will be used at least 80 percent of its total mileage in interstate commerce. The Department of Revenue and the OMV provide forms on which to make these certifications.

B. Any taxpayer who claims the exemption provided for in R.S. 47:305.50(A) must maintain records of the use of the property in order to document that the property is used for at least 80 percent of its total mileage in interstate commerce.

1. If the documentation indicates that the property was not used during the one year period following the date of its purchase for the required 80 percent or more of its total mileage in interstate commerce, the taxpayer will not qualify for the exemption and state and local sales or use tax will be due on the amount paid for the property at the rate that was applicable on the date the property was purchased, plus interest from the date the property was purchased to the date of the tax payment. The state portion of the tax must be reported on a sales tax return provided by the Department of Revenue and paid to the Department of Revenue by the 20th day of the month following the end of the one-year period in which the taxpayer fails to qualify for the exemption. The local portion of the tax must be reported and paid to the proper local taxing authority in accordance with their ordinances.

2. If, during any of the following one-year periods, the documentation indicates that the property was not used for the required 80 percent or more of its total mileage in interstate commerce, the taxpayer will no longer qualify for the exemption. If this occurs, state and local sales or use tax will be due on the lesser of the purchase price or fair market value of the property on the first day of the one-year period that it does not meet the 80 percent test. The tax will be calculated based on the rate in effect on the first day of the one-year period in which the taxpayer no longer qualifies for the exemption, plus interest from the date the tax is due to the date of tax payment. The state portion of the tax must be reported on a sales tax return provided by the Department of Revenue and paid to the Department of Revenue by the 20th day of the month following the end of the one-year period in which the taxpayer no longer qualifies for the exemption. The local portion of the tax must be reported and paid to the proper local taxing authority in accordance with their ordinances.

C. If the taxpayer fails to provide proper documentation, it will be presumed that the taxpayer does not qualify for the exemption and state and local sales or use tax will be due in accordance with subsection (B) above.

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:305.50 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28: ____.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, Post Office Box 44098, Baton Rouge, Louisiana 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Thursday, November 21, 2002. A public hearing will be held on Monday, November 25, 2002, at 10:00 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

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